

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEREK TUCSON, ROBIN SNYDER,
MONSIEREE DE CASTRO, and ERIK
MOYA-DELGADO,

Plaintiffs,

vs.

CITY OF SEATTLE, ALEXANDER
PATTON, TRAVIS JORDAN, DYLAN
NELSON, JOHN DOES (#1-4) AND JANE
DOES (#1-2)

Defendants.

No. 2:23-cv-00017 MJP

ANSWER

JURY DEMAND

Defendants, the City of Seattle, Alexander Patton, Travis Jordon, and Dylan Nelson (together, the Defendants), answer Plaintiffs' Supplemental Complaint as follows:

I. INTRODUCTION

1.1 Defendants admit the allegations in paragraph 1.1 of Plaintiffs' Supplemental Complaint.

1.2 Answering paragraph 1.2 of Plaintiffs' Supplemental Complaint, Defendants admit that Seattle Municipal Code (SMC) 12A.08.020 was amended in response to the above-captioned lawsuit. Defendants further answer that the language of SMC 12A.08.020 speaks for itself, and to the extent

1 that paragraph 1.2 contains allegations purporting to interpret SMC 12A.08.020, they are denied.
2 Defendants further answer that they are without sufficient knowledge or information to admit or deny
3 the allegations in paragraph 1.2 of Plaintiffs' Supplemental Complaint regarding their fear of being
4 arrested and jailed for using sidewalk chalk to write political messages, and, therefore, deny the same.
5 The remaining allegations in paragraph 1.2 of Plaintiffs' Supplemental Complaint are legal
6 conclusions to which no response is required; and, to the extent any response is required they are
7 denied.

8 1.3 Defendants deny the allegations in paragraph 1.3 of Plaintiffs' Supplemental Complaint.

9 1.4 Answering paragraph 1.4 of Plaintiffs' Supplemental Complaint, Defendants admit that
10 Plaintiff Derek Tucson was arrested for violating SMC 12A.08.020 after he was observed by Seattle
11 Police Officers writing on a concrete wall that was erected by the City of Seattle around the East
12 Precinct building of the Seattle Police Department (SPD). Defendants further admit that the other
13 Plaintiffs were arrested for violations of SMC 12A.08.020. Defendants deny the remaining allegations
14 in paragraph 1.4 of Plaintiffs' Supplemental Complaint.

15 1.5 Defendants deny the allegations in paragraph 1.5 of Plaintiffs' Supplemental Complaint.

16 1.6 Defendants deny the allegations in paragraph 1.6 of Plaintiffs' Supplemental Complaint.

17 II. PARTIES

18 2.1 Defendants are without sufficient knowledge or information to admit or deny the allegations
19 in paragraph 2.1 of Plaintiffs' Supplemental Complaint, and, therefore, deny the same.

20 2.2 Defendants are without sufficient knowledge or information to admit or deny the allegations
21 in paragraph 2.2 of Plaintiffs' Supplemental Complaint, and, therefore, deny the same.

22 2.3 Defendants are without sufficient knowledge or information to admit or deny the allegations
23 in paragraph 2.3 of Plaintiffs' Supplemental Complaint, and, therefore, deny the same.

2.4 Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 2.4 of Plaintiffs' Supplemental Complaint, and, therefore, deny the same.

2.5 Answering paragraph 2.5 of Plaintiffs' Supplemental Complaint, Defendants admit the City of Seattle is a municipal corporation and political subdivision of the State of Washington. Defendants deny the remaining allegations of paragraph 2.5 of Plaintiffs' Supplemental Complaint.

2.6 Answering paragraph 2.6 of Plaintiffs' Supplemental Complaint, Defendants admit Alexander Patton was employed by SPD. The remaining allegations in paragraph 2.6 of Plaintiffs' Supplemental Complaint are legal conclusions to which no response is required; and, to the extent any response is required, they are denied.

2.7 Answering paragraph 2.7 of Plaintiffs' Supplemental Complaint, Defendants admit Travis Jordon was employed by SPD. The remaining allegations in paragraph 2.7 of Plaintiffs' Supplemental Complaint are legal conclusions to which no response is required; and, to the extent any response is required, they are denied.

2.8 Answering paragraph 2.8 of Plaintiffs' Supplemental Complaint, Defendants admit Dylan Nelson was employed by SPD. The remaining allegations in paragraph 2.8 of Plaintiffs' Supplemental Complaint are legal conclusions to which no response is required; and, to the extent any response is required, they are denied.

2.9 Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 2.9 of Plaintiffs' Supplemental Complaint; and, therefore, deny the same.

2.10 Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 2.10 of Plaintiffs' Supplemental Complaint; and, therefore, deny the same.

III. JURISDICTION AND VENUE

3.1 Defendants admit the allegations of paragraph 3.1 of Plaintiffs' Supplemental Complaint.

3.2 Defendant admits the allegations of paragraph 3.2 of Plaintiffs' Supplemental Complaint.

IV. FACTS

4.1 Defendants admit the allegation in paragraph 4.1 of Plaintiffs' Supplemental Complaint.

4.2 Defendants admit the allegations in paragraph 4.2 of Plaintiffs' Supplemental Complaint.

4.3 Answering paragraph 4.3 of Plaintiffs' Supplemental Complaint, Defendants admit that Plaintiff Derek Tucson was arrested for violating SMC 12A.08.020 by writing on the "eco-block" wall, that Mr. Tucson did not resist, and that he asked why he was being arrested. Defendants deny that the content of the writing was part of the basis for the arrest and deny that the messages were apparent to or legible by the officers at the time of the arrests. Defendants admit the remaining allegations in paragraph 4.3 of Plaintiffs' Supplemental Complaint.

4.4 Answering paragraph 4.4 of Plaintiffs' Supplemental Complaint, Defendants admit that Plaintiff Derek Tucson was arrested by Defendant Patton. As to the remaining allegations in paragraphs 4.4 of Plaintiffs' Supplemental Complaint, Defendants answer that the contents of public records and referenced video footage speak for themselves. To the extent any answer is required in response to Plaintiffs' description of "publicly available images," Plaintiffs are without sufficient knowledge or information to admit or deny the contents thereof; and, therefore, deny the same.

4.5 Defendants deny the allegations in paragraph 4.5 of Plaintiffs' Supplemental Complaint.

4.6 Defendants admit that people who were standing nearby were heatedly yelling at the arresting officers and demanding explanation. Defendants deny the remaining allegations in paragraph 4.6 of Plaintiffs' Supplemental Complaint.

1 4.7 Defendants admit the allegations in paragraph 4.7 of Plaintiffs' Supplemental Complaint.

2 4.8 Answering paragraph 4.8 of Plaintiffs' Supplemental Complaint, Defendants deny that the
3 messages were apparent to or legible by the officers at the time of the arrests. Defendants
4 admit that the messages referred to in paragraph 4.8 were written on the eco-block wall at
5 some time that night, whether before, between, or after the arrests.

6 4.9 Defendants admit that messages were written in charcoal or chalk and deny the remaining
7 allegations in paragraph 4.9 of Plaintiffs' Supplemental Complaint.

8 4.10 Answering paragraph 4.10 of Plaintiffs' Supplemental Complaint, Defendants deny that the
9 content of the writing was part of the basis for Plaintiff Robin Snyder's arrest and deny that
10 the messages were apparent to or legible by the officers at the time of the arrests. Defendants
11 admit the remaining allegations of paragraph 4.10.

12 4.11 Answering paragraph 4.11 of Plaintiffs' Supplemental Complaint, Defendants admit that
13 Plaintiff Robin Snyder was arrested by Defendant Nelson, that Defendant Patton was the
14 arresting officer, and that Defendant Patton did not physically participate in the arrest. As to
15 the remaining allegations in paragraphs 4.11 of Plaintiffs' Supplemental Complaint,
16 Defendants answer that the contents of any video footage speak for themselves..

17 4.12 Answering paragraph 4.12 of Plaintiffs' Supplemental Complaint, Defendants deny that the
18 content of the writing was part of the basis for Plaintiff Monsieree DeCastro's arrest and deny
19 that the messages were apparent to or legible by the officers at the time of the arrests.
20 Defendants admit the remaining allegations of paragraph 4.12.

21 4.13 Answering paragraph 4.13 of Plaintiffs' Supplemental Complaint, Defendants admit that
22 Plaintiff Monsieree DeCastro was arrested by Defendant Nelson, that Defendant Patton was
23 the arresting officer, and that Defendant Patton did not physically participate in the arrest. As

1 to the remaining allegations in paragraphs 4.13 of Plaintiffs' Supplemental Complaint,
2 Defendants answer that the contents of any video footage speak for themselves.

3 4.14 Answering the first sentence of paragraph 4.14 of Plaintiffs' Supplemental Complaint,
4 Defendants deny that the contents of the writing was part of the basis for the arrest and deny
5 that that the messages were apparent to or legible by the officers at the time of the arrests;
6 Defendants admit the remaining allegations of the first sentence of paragraph 4.14. Defendants
7 deny the allegations in the second sentence of paragraph 4.14. Defendants admit the
8 allegations in the third sentence of paragraph 4.14.

9 4.15 Answering paragraph 4.15 of Plaintiffs' Supplemental Complaint, Defendants admit that
10 Plaintiff Erik Moya-Delgado was arrested, that Defendant Patton was the arresting officer,
11 and that Defendant Patton did not physically participate in the arrest. As to the remaining
12 allegations in paragraphs 4.15 of Plaintiffs' Supplemental Complaint, Defendants answer that
13 the contents of any video footage speak for themselves.

14 4.16 Answering paragraph 4.16 of Plaintiffs' Supplemental Complaint, Defendants admit that
15 Plaintiffs were handcuffed and placed in holding cells within the East Precinct Building.
16 Defendants deny the remaining allegations of paragraph 4.16 of Plaintiffs' Supplemental
17 Complaint.

18 4.17 Answering paragraph 4.17 of Plaintiffs' Supplemental Complaint, Defendants assert that the
19 contents of King County announcements, statements, or policies speak for themselves and no
20 answer is required. To the extent that an answer is required, Defendants admit the allegations
21 of paragraph 4.17 of Plaintiffs' Supplemental Complaint.

22 4.18 Defendants admit the allegations in paragraph 4.18 of Plaintiffs' Supplemental Complaint.
23

1 4.19 Answering paragraph 4.19 of Plaintiffs' Supplemental Complaint, Defendants admit the King
2 County Jail accepted arrestees for booking for offenses other than those listed in any County
3 "booking policy," from law enforcement agencies, including the City. Defendants deny that
4 the City of Seattle had authority to "override" County policy. Defendants are without
5 sufficient knowledge or information to admit or deny the remaining allegations in paragraph
6 4.19 of Plaintiffs' Supplemental Complaint; and, therefore, deny the same.

7 4.20 Defendants deny the allegations in paragraph 4.20 of Plaintiffs' Supplemental Complaint.

8 4.21 Defendants deny the allegations in paragraph 4.21 of Plaintiffs' Supplemental Complaint.

9 4.22 Defendants are without sufficient knowledge or information to admit or deny the allegations
10 in paragraph 4.22 of Plaintiffs' Supplemental Complaint; and, therefore, deny the same.

11 4.23 Defendants deny the allegations in paragraph 4.23 of Plaintiffs' Supplemental Complaint.

12 4.24 Defendants deny the allegations in paragraph 4.24 of Plaintiffs' Supplemental Complaint.

13 4.25 Paragraph 4.25 of Plaintiffs' Supplemental Complaint contains legal conclusions, which do
14 not require an answer, in addition to factual allegations. To the extent Plaintiffs' legal
15 conclusions require an answer, Defendants deny the same. Defendants are without sufficient
16 knowledge or information to admit or deny the factual allegations in paragraph 4.25 of
17 Plaintiffs' Supplemental Complaint; and, therefore, deny the same.

18 4.26 Defendants are without sufficient knowledge or information to admit or deny the allegations
19 in paragraph 4.26 of Plaintiffs' Supplemental Complaint; and, therefore, deny the same.

20 4.27 Defendants admit the allegations in paragraph 4.27 of Plaintiffs' Supplemental Complaint.

21 4.28 Answering paragraph 4.28 of Plaintiffs' Supplemental Complaint, Defendants state that the
22 language of SMC 12A.08.020 in effect at the time of Plaintiffs' arrests speaks for itself, and
23

1 no answer is required. To the extent that any answer is required, Defendants admit the
2 allegations in paragraph 4.28 of Plaintiffs' Supplemental Complaint.

3 4.29 Answering paragraph 4.29 of Plaintiffs' Supplemental Complaint, Defendants state that the
4 language of SMC 12A.08.020 in effect at the time of Plaintiffs' arrests and the language of
5 RCW 9A.48.090 speak for themselves and no answer is required. To the extent any answer is
6 required, Defendants admit that the former SMC 12A.08.020 and RCW 9A.48.090 differed.
7 Defendants deny the remaining allegations in paragraph 4.29 of Plaintiffs' Supplemental
8 Complaint.

9 4.30 Paragraph 4.30 of Plaintiffs' Supplemental Complaint contains legal conclusions to which no
10 response is required. To the extent that any response is required, Defendants deny the
11 allegations in paragraph 4.30 of Plaintiffs' Supplemental Complaint.

12 4.31 Defendants admit the allegations in paragraph 4.31 of Plaintiffs' Supplemental Complaint.

13 4.32 Defendants deny the allegations in paragraph 4.32 of Plaintiffs' Supplemental Complaint.

14 4.33 Answering paragraph 4.33 of Plaintiffs' Supplemental Complaint, Defendants admit Plaintiffs
15 were not prosecuted for violations of SMC 12A.08.020. Defendants deny the remaining
16 allegations in paragraph 4.33 of Plaintiffs' Supplemental Complaint.

17 4.34 Defendants deny the allegations in paragraph 4.34 of Plaintiffs' Supplemental Complaint.

18 4.35 Answering paragraph 4.35 of Plaintiffs' Supplemental Complaint, Defendants state that the
19 language of SMC 12A.08.020 speaks for itself and no answer is required. To the extent that
20 an answer is required, Defendants admit that paragraph 4.34 accurately recites the language
21 of SMC 12A.08.020. Defendants further state that the legislative history of SMC 12A.08.020
22 speaks for itself and no answer is required. To the extent that an answer is required,
23

1 Defendants admit that paragraph 4.35 accurately recites the legislative history of SMC
2 12A.08.020. I

3 4.36 Paragraph 4.36 contains legal conclusions and legal argument to which no answer is required.
4 To the extent that any answer is required, Defendants deny the allegations in paragraph 4.36
5 of Plaintiffs' Supplemental Complaint.

6 4.37 Defendants deny the allegations in paragraph 4.37 of Plaintiffs' Supplemental Complaint.

7 4.38 Answering paragraph 4.38 of Plaintiffs' Supplemental Complaint, Defendants admit the City
8 has a long-established policy of treating sidewalk chalk *on sidewalks* as non-criminal.

9 4.39 Answering paragraph 4.39 of Plaintiffs' Supplemental Complaint, Defendants admit that
10 paragraph 4.39 accurately reproduces the Twitter post is accurately reproduced but deny that
11 the question or post make any reference to the concept of political neutrality.

12 4.40 Answering paragraph 4.40, Defendants are without sufficient knowledge or information to
13 admit or deny that the City took no enforcement action against the chalked messages displayed
14 in paragraphs 4.40; and, therefore, denies the same. Defendants deny the remaining allegations
15 in paragraph 4.40 of Plaintiffs' Supplemental Complaint.

16 4.41 Answering paragraph 4.41, Defendants are without sufficient knowledge or information to
17 admit or deny that the City took no enforcement action against the chalked messages displayed
18 in paragraphs 4.41; and, therefore, denies the same. Defendants deny the remaining allegations
19 in paragraph 4.41 of Plaintiffs' Supplemental Complaint.

20 4.42 Defendants deny the allegations in paragraph 4.42 of Plaintiffs' Supplemental Complaint.

21 4.43 Defendants deny that SPD Lt. John Brooks expressed discriminatory animus or "threatened"
22 any member of the public. Defendants are without sufficient knowledge or information to
23 admit or deny whether the reproduced image is from an audio-recording and are unable to

1 admit or deny the contents of any writing in the image. Defendants further respond that the
 2 contents of any audio-video recording speak for themselves. Defendants deny the remaining
 3 allegations in paragraph 4.43.

4 4.44 Defendants deny the allegations in paragraph 4.44 of Plaintiffs' Supplemental Complaint.

5 4.45 Defendants deny the allegations in paragraph 4.45 of Plaintiffs' Supplemental Complaint.

6 V. CAUSES OF ACTION

7 Count One: First Amendment Violations under 42 U.S.C. § 1983

8 5.1 Defendants deny the allegations in paragraph 5.1 of Plaintiffs' Supplemental Complaint.

9 5.2 Defendants deny the allegations in paragraph 5.2 of Plaintiffs' Supplemental Complaint.

10 5.3 Defendants deny the allegations in paragraph 5.3 of Plaintiffs' Supplemental Complaint.

11 5.4 Defendants deny the allegations in paragraph 5.4 of Plaintiffs' Supplemental Complaint.

12 5.5 Defendants deny the allegations in paragraph 5.5 of Plaintiffs' Supplemental Complaint.

13 Count Two: Fourteenth Amendment Violations under 42 U.S.C. § 1983

14 5.6 Defendants deny the allegations in paragraph 5.6 of Plaintiffs' Supplemental Complaint.

15 5.7 Defendants deny the allegations in paragraph 5.7 of Plaintiffs' Supplemental Complaint.

16 5.8 Defendants deny the allegations in paragraph 5.8 of Plaintiffs' Supplemental Complaint.

17 Count Three: Fourth Amendment Violations under 42 U.S.C. § 1983

18 5.9 Defendants deny the allegations in paragraph 5.9 of Plaintiffs' Supplemental Complaint.

19 Count Four: Monell claim under 42 U.S.C. § 1983

20 5.10 Defendants deny the allegations in paragraph 5.10 of Plaintiffs' Supplemental Complaint.

21 5.11 Defendants deny the allegations in paragraph 5.5 of Plaintiffs' Supplemental Complaint.

22 VI. REQUEST FOR RELIEF

23 6.1 Answering paragraphs 76.1 through 7.8, Defendants deny Plaintiffs' prayer for relief in its

entirety and deny that Plaintiffs are entitled to any of the damages or other relief sought in their Supplemental Complaint. Defendants further deny that Plaintiffs have any valid claim for relief, and to the extent factual allegations are intended and/or legal conclusions contrary to applicable law are alleged, they are hereby denied.

6.2 Defendants deny each and every allegation not specifically addressed in this Answer.

AFFIRMATIVE DEFENSES

By way of further answer, without admitting any allegations previously denied, and as to its affirmative and other defenses, Defendants would show that at the time of the filing of their Answer they have not yet had a full opportunity to conduct a complete inquiry into the facts underlying this lawsuit, including the alleged damages. Based upon their knowledge, information and belief at the present time, however, Defendants asserts the following affirmative defenses:

1. Plaintiffs have failed to state a claim against the Defendants upon which relief may be granted.
2. Plaintiffs lack standing to facially attack the ordinance, which deprives this Court of subject-matter jurisdiction.
3. Plaintiffs lack standing to assert a claim for injunctive relief, which deprives this Court of subject-matter jurisdiction.
4. The City of Seattle, a municipal corporation, and its agencies, are immune from liability for prejudgment interest on tort judgments and are immune from punitive damages.
5. Plaintiffs' claims are barred by qualified immunity.
6. The individually named Officer Defendants' conduct was privileged and supported by authority of law.
7. Plaintiffs' damages and injuries, if any, may have been caused by third parties over

1 whom Defendants had no control. Accordingly, an award of damages to this Plaintiff must be reduced
2 to reflect the percentage of fault attributable to each at fault party as required by RCW 4.22.070.

3 8. Plaintiffs' alleged injuries, losses, and damages, if any, may have been proximately
4 caused by the fault and/or negligence of Plaintiffs. Said fault and/or negligence will reduce Plaintiffs'
5 recovery in this matter.

6 9. Plaintiffs have failed to take reasonable steps to mitigate damages.

7 10. Defendants reserve the right to amend this Answer to assert additional affirmative
8 defenses, counterclaims, or cross-claims as may be appropriate based upon future discovery. Nothing
9 contained in this Answer should be construed as a waiver of any such additional defenses. Defendants
10 likewise expressly reserve their right to strike any admission, denial or affirmative defense if the
11 continuing discovery in this matter warrants it.

12 Upon request, and after conducting sufficient discovery, Defendants will withdraw any of the
13 affirmative defenses unsupported by the facts revealed in pre-trial discovery and investigation, should
14 there be any.

15
16 WHEREFORE, having fully answered the Plaintiffs' Supplemental Complaint and having
17 asserted defenses and affirmative defenses, Defendants respectfully requests that the Court:

- 18 1. Dismiss Plaintiffs' Supplemental Complaint with prejudice with no relief to Plaintiffs;
19 2. Award the Defendants costs; and,
20 3. Award the Defendants such other and further relief as the Court deems just and
21 equitable.

22
23 DATED this 20th day of July, 2023.

ANN DAVISON
Seattle City Attorney

By: /s/Jessica Leiser
Kerala Cowart, WSBA# 53649
Jessica Leiser, WSBA# 49349
Assistant City Attorneys

E-mail: kerala.cowart@seattle.gov
E-mail: jessica.leiser@seattle.gov

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 684-8200

*Attorneys for Defendant City of Seattle, Alexander Patton, Travis
Jordon, Dylan Nelson*